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ORIGINAL

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

BLAKE A. FIELD,

Plaintiff,

vs.

GOOGLE INC.,

Defendant.

AND RELATED COUNTERCLAIMS

No.: CV-S-04-0413-RCJ-GWF

DECLARATION OF BILL BROUGHER IN SUPPORT OF GOOGLE'S MOTION FOR SUMMARY JUDGMENT

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I, Bill Brougher, declare as follows:

1. I am the Product Manager at Google, Inc. ("Google") for Google's Web Search feature. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. Google maintains one of the world's largest and most popular Internet search engines accessible, among other places, on the World Wide Web at www.google.com.

3. There are billions of Web pages on the Internet indexed by Google. Google's Web Search allows users to quickly locate information from these Web pages on a particular subject via a simple search query. Google accomplishes this task, in part, by compiling an index of the content available on accessible Web sites and querying this index rather than querying the billions of different Web pages.

4. Google – like other search engines – uses an automated software program (also known as a Web crawler, spider, or Googlebot) to obtain copies of publicly available Web pages. It would be impossible for Google to locate and index all of the Web pages manually. The Googlebot, like other users of the Web, obtains copies of Web pages by sending requests to the server for the originating Web site and receiving the requested content in response.

5. Google analyzes a copy of each Web page it receives from the originating Web servers and stores the copies in Google's system cache through an automatic technical process. When a user submits a query, the Google Search Engine searches the Google system cache and quickly returns a search results page containing links to a list of Web pages within Google's index that are relevant to the user's query.

6. Google maintains an online self-submission form at http://www.google.com/addurl, which allows a Web site owner to specifically request that Google send the Googlebot to their Web site, copy their Web pages into the Google system cache and include their Web pages in the Google search results.

7. For many of the Web pages identified in response to user searches of the Google search engine at www.google.com, Google also provides users with the option of selecting a link to Google's "Cached" copy of the Web page. The copy of a page in the Google system

cache is only temporary: Google maintains a copy of a given Web page in the Google system cache only until the Googlebot next visits the particular Web page. This allows the Googlebot sufficient time to make it through the billions of Web pages and return to the particular Web page for re-indexing. Google has provided "Cached" links with its search results since 1998. This link is provided in a smaller font at the end of the Google search results entry, below the link to the original Web page. Google provides users with a link to Google's cache copy of Web pages through an automatic technical process to allow user's to see the copy of the Web page used by Google Search.

8. When a user clicks on the "Cached" link, the user sends a request to Google's computers which respond automatically by transmitting the archival copy of a Web page stored in Google's system cache, rather than directing the user to the original Web site for that page. Google's cached copy or "snapshot" presents the Web page as it appeared the last time the Web page was visited and analyzed by the Googlebot.

9. Attached as **Exhibit 1** is a true and correct copy of a screenshot from Google's Web site, showing the results from a search for the terms "apple mini mac review."

10. As shown in Exhibit 1, Google's search results prominently display the title of each page (*e.g.*, "Apple Mac mini review by PC Magazine") which, if clicked by the user, will take the user to that page. The title is followed by a short "snippet" from the Web page in smaller font. Following the snippet, Google typically provides the full URL for the page (*e.g.*, "www.pcmag.com/article2/0,1759,1753962,00.asp"). Finally, in the same smaller font, Google often displays another link labeled "Cached."

11. If an Internet user clicked on the "Cached" link, he or she is directed to a copy of that page stored in Google's system cache. The cached page shows the original page as it existed when it was accessed, copied, and indexed by Google, but with the user's search terms highlighted. Attached as **Exhibit 2** is a true and correct copy of a screenshot from Google's cached page for one of the sites listed in Exhibit 1. As shown in Exhibit 2, when Google displays the cached page, it highlights the user's search terms (*e.g.*, the term "apple" is highlighted in yellow, the term "mac" is highlighted in cyan, and the term "mini" is highlighted

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in blue). If a search term does not appear on the Web page, but only in links pointing to the Web page, this is also identified (*e.g.*, the search term "review" did not appear in the Web page and the notice indicates that "[t]hese terms only appear in links pointing to this page: **review**." *See* Exhibit 2. Thus, Google's "Cached" feature tells the user why this particular page appears in the search results for the query "apple mini mac review." This page contains the terms "apple," "mac," and "mini" in the text, and another Web page provided a link to this page that characterized this page as a "review."

12. Google adds a notice at the top of its cached page identifying the fact that the Web page is from Google's system cache, and not the originating Web page, noting that "Google's cache is the snapshot that we took of the page as we crawled the web. The page may have changed since that time." The notice also identifies the date that Google obtained the copy of the Web page and provides two separate links to the original Web page. Google also highlights the user's search terms.

13. Google's cache copy contains no Google advertising. Google does not sell or license third party content found in its cached copy.

14. Google's cache of a particular Web page provides Internet users and content providers with a number of benefits. First, it allows users to view pages that the user cannot, for whatever reason, access directly. A Web page can become inaccessible to Internet users because of transmission problems, because nations or service providers seek to censor certain information, because too many users are seeking the same page at the same time, or because the page has simply been removed from its original location. In each case, users may still be able to access an archival copy of the page via the "Cached" link in Google's search results. This also benefits Web publishers by allowing people to view their content at a time when it would not otherwise be available.

15. Second, this archival functionality is also of considerable importance to those who wish to determine how a particular Web page has been altered over time. By examining Google's copy of the page, users (including those conducting research – such as teachers,

librarians, and journalists) can identify subtle but potentially significant differences between the current version of a page, and the page as it existed when the Googlebot last visited that page.

16. Third, the "Cached" link allows users to immediately determine why a particular page was deemed responsive to their search query, by highlighting the terms in the user's query. This can be of particular importance to users where a page has been modified, or where the reason that a page was returned in response to a user's query is not readily apparent.

17. Google, Yahoo!, and MSN all offer "Cached" links in their search results. According to Nielsen/NetRatings, these three search engines account for at least 80% of all Web searches. *See* http://www.netratings.com/pr/pr_050824.pdf.

18. It is not possible for Google to communicate in person with each of the millions of Web site publishers or owners to determine each site's preferences on inclusion in Google's search engine and/or cache. There are a number of industry standard methods that a Web site owner can use to limit or preclude access to a Web site or particular Web pages by Google and other search engines. These standards are identified by Google at http://www.google.com/remove.html. Moreover, these standards are set forth at http://www.robotstxt.org/. Google complies with these standards. These standards are generally known by Web site publishers and are easily identified on the Web. In addition, meta tags are built into HTML, the language used to construct Web pages.

19. As explained on http://www.google.com/remove.html and at http://www.robotstxt.org/wc/norobots.html, a Web site owner can prevent Google and other search engines from crawling a particular Web site by including the following robots.txt file in the server root:

*User-agent: **

Disallow: /

If the Googlebot encounters a robots.txt file with the above text, then it will not crawl the Web site, and as a result, there will be no entry for that Web page in Google's search results and thus no cached link.

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20. As explained on http://www.google.com/remove.html and at http://www.robotstxt.org/wc/exclusion.html#meta, a Web site owner can prevent Google and other search engines from crawling a particular Web page by including the following meta tag on the Web page:

<META NAME="ROBOTS" CONTENT="NOINDEX, NOFOLLOW">

The meta tag can be structured to only preclude the Googlebot, and not other robots, by replacing "ROBOTS" with "GOOGLEBOT" in the meta tag.

21. As explained on http://www.google.com/remove.html, a Web site owner can prevent Google and other search engines from archiving or providing a cached link to a particular Web page by including the following meta tag on the Web page:

<META NAME="ROBOTS" CONTENT="NOARCHIVE">

The meta tag can be structured to only limit the Googlebot, and not other robots, by replacing "ROBOTS" with "GOOGLEBOT" in the meta tag. A Web site owner can add the "NOARCHIVE" meta tag in a matter of seconds.

22. If a Web site owner includes the "NOARCHIVE" meta-tag on a page, then Google would *not* provide a "Cached" link when it listed that page in its search results. For example, the third listing in Exhibit 1 is for a Web page titled "Tom's Hardware Guide PCs & HowTo: Apple Mac Mini." Google does not provide a "Cached" link for this Web page. This is because the Tom's Hardware Guide Web page includes a "NOARCHIVE" meta-tag. Attached as **Exhibit 3** is a true and correct copy of a printout from the Tom's Hardware Guide Web page (http://www.tomshardware.com/howto/20050216/). Attached as **Exhibit 4** is a true and correct copy of a printout of the first page of the HTML code for this Web page on the Tom's Hardware Guide Web site (http://www.tomshardware.com/howto/20050216/). The original HTML code is plaintext. For convenience, the "NOARCHIVE" meta-tag has been highlighted in yellow.

23. As explained on http://www.google.com/remove.html, a Web site owner can use Google's automatic URL removal system to start this process immediately if a particular Web site or Web page has already been indexed by Google.

24. A Web site owner can also directly contact Google – by email or otherwise – to request that a particular Web site or Web page not be crawled or archived. An owner can even make such requests prospectively, before the Googlebot visits its site, to prevent the pages from ever being included or cached. Google honors these requests.

25. A Web site owner can also limit access by the Googlebot and other robots with traditional access controls, such as requiring a password or registration prior to entry into a particular Web site or Web page. In those situations the Googlebot, like other Web users, will not be able to access the restricted Web site or Web page and thus would not copy, index or cache that page.

26. Google has, for a number of years and without objection, displayed "Cached" links to an overwhelming majority of highly sophisticated Internet publishers, including those operating Web sites for Disney, Sports Illustrated, America Online, ESPN and Readers' Digest

27. Over the years, no site owner has demanded that Google pay to display "Cached" links to the pages of its site.

28. Google has a program named AdWords which allows advertisers to purchase online advertising which is displayed on Google and Web sites in the Google partner network. The AdWords program is independent of the Google Search functionality.

29. Today site owners currently pay other search engine operators huge sums to have their sites listed prominently within the search engines' results pages. This transaction is known as "pay-for-placement" and is standard operating procedure on such well-known search engines as Looksmart, Overture, and Findwhat/MIVA. Google has never accepted payment from a site for placement in its search results.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on September __, 2005, ~~at Mountain~~ View, California.

Bill Brougher

Snell & Wilmer L.L.P. LAW OFFICES

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing **DECLARATION OF BILL BROUGHER IN SUPPORT OF GOOGLE'S MOTION FOR SUMMARY JUDGMENT** was served this 27 day of September, 2005, by placing same in the United States mail, postage prepaid, addressed to the following:

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Telephone (702) 373-1022
Pro Se Plaintiff

Judith B. Warren
An employee of Snell & Wilmer, L.L.P.

84973.1

CERTIFICATE OF MAILING

I certify that a true and correct copy of the foregoing DECLARATION OF BILL BROUGHER IN SUPPORT OF GOOGLE INC.'S MOTION FOR SUMMARY JUDGMENT was served this 3 day of November, 2005, by placing same in the United States mail, postage prepaid, addressed to the following:

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These search terms have been highlighted: **apple** [redacted]
These terms only appear in links pointing to this page: **review**

[redacted]: The Emperor's New Computer

by Jorge Lopez, MCSE

Technology Insider
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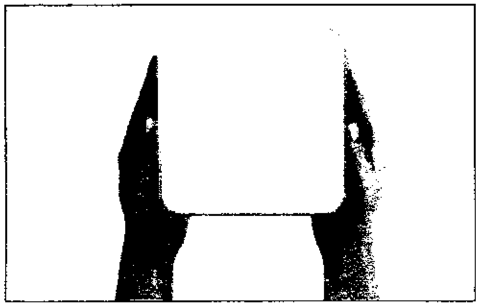

The faithful: *A set of praying hands exalts* [redacted] *to the heavens.*

Apple is a master at hype, everyone knows this. Its founder, Steve Jobs, is well-known throughout the industry for possessing a "reality distortion field" which makes people crave **Apple** computers and one-button mice despite their exorbitant price and in the face of all rational logic. Both the **Apple** hype machine and Jobs' reality distortion field have kicked into overdrive this year with the recent release of the bold, innovative and affordable G4 Cube... oops I mean the [redacted].

I'll admit, we were excited at first to get one in the lab to put through its paces. I had heard about the machine and seen a few clips on G4 of Steve Jobs' keynote at Macworld San Francisco in January. My curiosity piqued by the pronouncement of a $499 computer from **Apple**, I checked out **Apple**.com to look up its specs. While the hardware is about roughly equivalent to a Windows PC circa 1995, what got me interested were **Apple**'s claims about its size, weight and footprint.

If you believe **Apple**'s marketing department, the new **Mini** is "smaller than most packs of gum" and weighs "less than four quarters". Well, we received our test unit from **Apple** yesterday, and let me say right off the bat that those claims are a wee bit of an exaggeration. Far from being Trident-sized, the **Mini** actually measures about 6.5"x6.5"x2", about the size of two wonderbread cheese sandwiches stacked on top of each other, or about 50 packs of Bubble Yum. As for the weight, it feels about three pounds. Hold a **Mini** in one hand and four quarters in the other and tell me which one feels heavier. You could perform this experiment yourself at an **Apple** store.

As for the style of the unit, it's alright. It reminds me of a ShuttlePC. But since its sleek look comes at the expense of the parallel port, serial ports, the PS/2 ports and the drive bays, potential [redacted] buyers should ask themselves just how much utility they're willing to sacrifice for style. Oh, did I forget to mention that the [redacted] has no PCI slots either? And no floppy disk drive? Well, no wonder they got the unit to be so small. No keyboard or mouse either. Sorry Kayla, daddy's got to make another trip to Best Buy before you can play with your new computer. Hmmm, let's see here.

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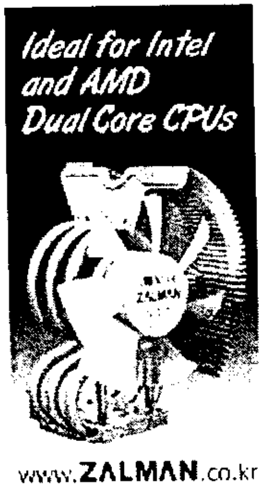

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Apple Mac Mini: Smaller, More Stylish - and Cheaper Than a PC?

Mac Mini: Tiny, Quiet, Energy Efficient, With Lasting Value

Article Info

Apple Mac Mini: Smaller, More Stylish - and Cheaper Than a PC?

Created:
February 16, 2005

By:
Frank Völkel

Translated by:
Benjamin Kraft

Category:
PCs & HowTo

Summary:
It compact size, cool yet simple design and its attractive price set the Apple Mac mini apart from anything the competition has to offer.

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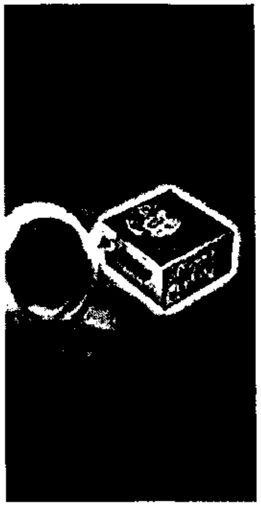

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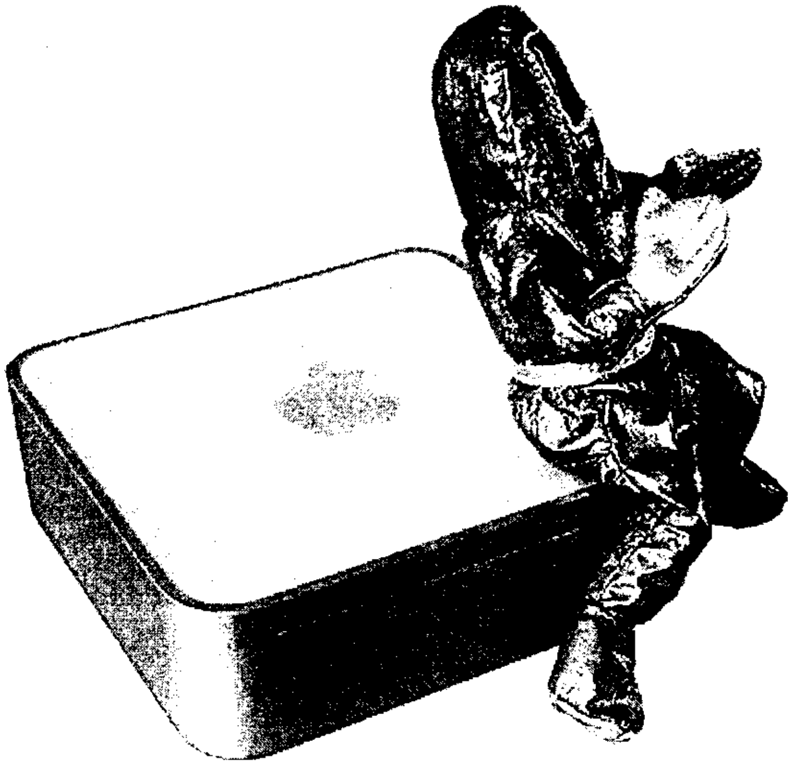

Apple is showing up the Windows world: the new Mac mini with its ultra-compact exterior

The concept is reminiscent of the Bauhaus style of the '20s - simple shape, compact exterior, and a certain coolness of design. And, above all, no frills. However, the Mac mini's minimalist appearance belies the very high level of functionality it offers.

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The little cube-shaped device could just as well be an object from the higher-end HiFi world. Yet the case, which is barely larger than a 20-disc DVD holder, houses a full-fledged computer, complete with drives and modern interfaces. The insertion slot for the optical drive on the aluminum-cased front of the mini is so unobtrusive that the new user might at first not even realize its function. Upon insertion, the disc is "automagically" drawn into the case, thanks to the slot-in mechanism within the Mac. An eject button is absent, though, and Apple has also decided to forego the inclusion of a blinking status LED.

NEXT: Mac Mini: Tiny, Quiet, Energy Efficient, With Lasting Value, Continued

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- **Mac Mini: Tiny, Quiet, Energy Efficient, With Lasting Value**
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Business Reports
Intel Makes Big Changes At IDF

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<HTML>

<HEAD>

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<SCRIPT LANGUAGE="javascript" TYPE="text/javascript">

function getWindowSize(type)

{

        winwidth = (window.innerWidth) ? window.innerWidth : document.body.clientWidth;

        if (winwidth > 955) {winwidth = 955} else {winwidth=winwidth-25};

        if (type == 1) winwidth=winwidth-500;

        return winwidth;

}

bizrate = 0;

function DocHeight()

{

        docheight = 0;

        if (document.body.scrollHeight) docheight = document.body.scrollHeight;
```

Roni Hayes/NVD/09/USCOURTS
11/08/2005 10:35 AM

To Sandi Reed
cc
bcc
Subject Another weird image

Please see 2:05cv531. Document #48 has an image attached that does not belong. There should only be one (1) main document. Thanks.

Roni Hayes
U.S. District Court,
District of Nevada
702-464-5425

Roni Hayes/NVD/09/USCOURTS
11/08/2005 08:26 AM

To NVDml_ClerksOffice_LV, NVDml_ClerksOffice_Reno, NVDml_JudgesSecretaries_LV, NVDml_JudgesSecretaries_Reno, Philip Pro/NVD/09/USCOURTS@USCOURTS
cc
bcc
Subject Tues., Nov. 8 - gone in LV

Alana
Robert (out 12:45 p.m.)
Donna (out 9:00 a.m. to approx. 12 noon)

Patrick will be training off site today 9:00 -10:30 a.m. and again 2:30 - 4:00 p.m.

Roni Hayes
U.S. District Court,
District of Nevada
702-464-5425